IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CRIMINAL APPLICATION No. 807 of 1997
converted from
SPL. CRIMINAL APPLN. No. 1717 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.J. VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

KAILASH J THAKUR

Versus

KARMAN RAMA & ANOTHER

Appearance:
MR EE SAIYED for Petitioner
MR ND GOHIL, ADDL.PP for Respondent No. 1

CORAM : MR.JUSTICE K.J.VAIDYA
Date of decision: 24/12/96

ORAL JUDGEMENT

Permitted to convert this application into Misc. Criminal Application. Leave to amend the cause title by adding Karman Rama and Amra Hari as party-respondents.

1. Rule. Learned APP Mr.N.D.Gohil appearing for the

respondent-State waives the service of Rule. Having regard to the facts and circumstances of the case, this application is heard and decided today.

2. The grievances voiced by Mr. E.E. Saiyed, learned Advocate appearing for the petitioner is that, though the application for the cancellation of bail against the respondents-accused came to be filed by the original complainant, as long back as on 5.5.1995 and yet till today, that is to say for about more than one and half year quite surprisingly the same has not been heard and disposed of !! Making good this submission, Mr. Saiyed has invited the attention of this Court to the copy of the Rojkam proceedings annexed to the petition at Annexure "C", from where it is pointed out that the learned Sessions Judge has merrily went on adjourning the case from one date to another, for about more than 37 times ignoring altogether the overall importance and significance of the cancellation of bail !! It also further appears that the learned P.P. also has not taken desired interest in assisting the Court in seeing that such applications are heard and decided at the earliest !!

3. Now the above state of affairs highlighted by Mr. Saiyed indeed clearly indicates - what a relaxed attitude !! Presumably and Possibly may be because the said application for cancellation of bail came to be filed at the instance of private complainant through learned advocate appearing for him. But then so what ? Thereby cancellation of bail never loses its due importance and urgency in view of the allegations narrated in the application for the same. Further, we all know that many a time for whatever right or wrong reason the State do not challenge the order granting bail or if it challenges it takes a considerable long time and accordingly by the time it is filed before the appropriate Court, much unfortunate things many a time happen where the accused abusing the liberty, while on bail by threats, promise, inducement and even actual assaults and jumping the bail delays the trial, defeats the prosecution, ultimately bringing about the miscarriage of justice. In this view of the matter, merely because an application for cancellation of bail came to be filed by the private party, it is not permissible to take it lightly !! In fact, once an application for the cancellation of the bail is entertained by the Court, it should invariably be decided as early as possible, by taking all necessary care-steps by all concerned namely, the concerned Court, ld.P.P. and the process serving agency even if it is filed at the instance of the original complainant or any

other aggrieved prosecution witness. Not to hear and decide such important applications in time and sit quietly indefinitely is as good as putting premium on an risking abuse of liberty by accused while on bail to the greatest prejudice in particular of the concerned prosecution witnesses personally and in general to the prosecution case !! This short of insensivity and inefficiency is quite hazardous like dullard sitting on the explosive volcano !

4. It is further important to note that there are cases and cases wherein if the Investigating Agency on the basis of affidavit if duly satisfies the higher court that if the impugned order granting bail is not immediately stayed and thereby the prosecution was likely to be seriously prejudiced, then in such exceptional case, the concerned court would be simply failing in its duty if it does not stay the bail order and/or immediately issue a non-bailable warrant against the accused for his arrest. Infact, in a given case of grave nature, firstly where from material available on record order releasing accused on bail is found to be patently illegal and perverse and/or secondly, further where there is every possibility of accused while on bail likely to abuse or has abused the liberty either by indulging into same or similar offences, threatening, promising or inducing the prosecution witnesses to give evidence against the prosecution, or thirdly, where the accused was likely to jump bail, or fourthly, in a given case likely to flee from the country, but for the immediate stay of the bail granted by the subordinate court or issuing the non-bailable warrants against him, the higher court can rather it must in overall interest of justice immediatedly stay the bail order and if that stage has gone then issue non-bailable warrant even at the admission stage. Justice does not mean justice to the accused alone, as the public interest is equally important and entitled to immediate protection, if in a given case, the case is made to issue non-bailable warrant even at the admission stage.

5. In bail cancellation application, ordinarily, the Court in the first instance issues notice to the accused making it returnable at the earliest date preferably within 7 days, by directing the police to serve the notice on accused. If despite service of notice accused

must hear and decide the bail cancellation application in his absence perusing the police papers. Further,in the event of for whatsoever reasons, if the process is either not served or not returned either served or unserved,

then in that case, the Court should not waste any time in issuing notice to the concerned P.I of the police station and the process serving agency under him calling upon both or either them to immediately file an affidavit showing cause as to what step has been taken by him/them to serve the notice by passing the order, in the following form.

F O R M

"This Court by an Order dated _____ issued notice/process/summons/ warrant(as the case may be) making it returnable on _____. Thereafter, it is placed on board today. Today, the endorsement in the Board shows that the notice/process/summons / warrants has not returned either served or unserved. Under the circumstances, the office is directed to immediately call for the explanation on affidavit of (i) the concerned process server as well as that of P.I or P.S.I of the concerned police station and (ii) in case of the Sessions Court if the process is forwarded through learned Magistrate to call for the explanation of dealing clerk as to why and under what circumstances the notice/ process / summon.....T.....

by this Court earlier has not returned either served or unserved or not served at all (!) as the case may be !! The concern P.I or P.S.I or process serving constable or the Clerk of the court shall remain personally present before the Court. S.O to _____. Explanation so received be placed before the undersigned.

Issue fresh notice/process/summons/ warrants making it returnable on _____. "

6. Further still, whenever any application for the cancellation of bail is made, the concerned Court while issuing notice to the accused should also further invariably and simultaneously issue notices to the concerned surities of accused. This is absolutely

necessary to help maintaining pressure upon surities for securing immediate presence of the accused at the earliest before the Court and save precious public time in case if accused chooses to keep the court at safe distance !! It is the experience of the Court that to first issue notice to the accused and then in the event of his failing to appear before the Court to issue notices to the sureties is unnecessarily time consuming and wasting the precious public time of the Court which has indeed other important cases to be tried and disposed off ! In this view of the matter in every cases wherein bail is granted and further where it is challenged by way of cancellation, while making application for the cancellation of bail, alongwith the accused,it is quite desirable if the sureties are also simultaneously joined as necessary parties and accordingly, simultaneous notices to them are issued. In case, if the applicant fails to join sureties as party then in that case matter does not come to an end as it is equally the duty of the Court also to see that surities are joined as a party at the earliest, directing them to produce and secure presence of the accused before the Court.

7. In the instant case, it appears that, nothing of the sort has been done !! The learned APP Mr. Gohil also having gone through the Rojkam proceedings was not in a position to point out what initiative, in the first instance the Court, in the second instance, learned PP and in the third instance the Police meaning thereby the process-serving agency had taken to serve the notice upon the accused, so that the application for the cancellation of the bail can be heard and decided, at the earliest.

8. Further as it appears, in the instant case the cancellation was sought on the ground that the respondents-accused had committed breach of the condition imposed by the trial Court while releasing them on bail viz of not entering into the particular area. Not only that but further also accused is alleged to have administered threat for which the complaint was filed before the police for the alleged offence punishable under Section 188 and 506(2) of the IPC. Under such straining, rather nerve wracking circumstances when a citizen approaches a Court making a definite allegation against the accused apprehending threat being immediately translated into action and in case if indeed it is so really translated then in that case, if the cancellation of bail application is to be just thrown in the cold storage, what indeed is the meaning of the remedy of the cancellation of bail provided by way of exercising such powers under section 439 (2) of the Code! In fact, the

Court entertaining the application for cancellation of the bail should positively bear in mind this most important aspect and should unfailingly see to it that the same is not taken lightly and is attended forthwith, as promptly as possible. If the bail application filed by the accused is required to be heard and decided at the earliest bearing in mind the question of the liberty of the citizen involved, the cancellation of the bail application is none the less equally important to be treated with the top-most priority if not more, in order to protect interest, of the complainant side and overall public interest for what ought we do not know accused while enlarged on bail may abuse his liberty any moment as apprehended and thereby either jump the bail or temper with evidence or commit some breach of law and order !! In fact what is the meaning and importance of the cancellation of bail is at length discussed and emphasized in case of Khimiben v/s State of Gujarat, reported in 1992 (1) GLH page 261. It is hoped that all the Courts in the State shall hereafter also take a note of this judgment and see to it that they initiate and activate themselves in direction of expeditious hearing and disposal of cancellation of bail application or for that purpose any such other applications requiring immediate attention in over all the interest of justice.

9. Ordinarily, in applications for the cancellation of bail, be it by the State or private party, notice is required to be issued to the respondent-accused. However, having regard to the peculiar nature of grievance voiced and relief prayed, where accused indeed has no business to say anything about, there is no need at all to issue notice to him, as there is no question of accused being in any way prejudiced if the Sessions Court is directed to activate itself to hear and decide the application at the earliest. The reason is accused has indeed no right whatsoever to object to early, expeditious disposal of cancellation of bail application against him. To protract criminal proceedings is not only no right of the accused or for that purpose of the prosecuting agency, but even the concerned court has no right or business to undermind speedy trial.

10. In the result, the petition is allowed. The trial Court is directed to fix the date of hearing of the application within 14 days from the date of receipt of this order and decide the same on merits according to law. Rule is made absolute accordingly. Direct service is permitted.

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